

Application No. 09/870,498  
Amendment dated September 19, 2008  
Reply to Office Action of May 1, 2008

Docket No.: NY-FAPESP 203-US

### REMARKS

Entry of the foregoing amendment is requested.

The Examiner has now issued a SIXTH non-final rejection. Intervention by the Supervisory Primary Examiner is called for.

As to point 3, the Examiner misstates the facts and applicants stand by their prior remarks.

Regarding the rejection under 35 U.S.C. § 112, claim 5, and hence all claims, now requires that the claimed peptide consist of 10-12 amino acids. The specification supports this, as do the examples.

Regarding the alleged absence of how to obtain peptides with antimicrobial activity, as the Examiner points out, one can obtain structural sequences.

Page 9, for example, describes how to determine if the peptide has antimicrobial activity. See page 9, line 13 – page 10, line 21. Figures 3A-3C summarize another mode for determining this. Example 3, at page 43, et seq. for example, describes a test for determining antimicrobial activity.

In any event, it's the Examiner's burden to make out a *prima facie* case. While the Examiner is alleging that the rejection is one based on written description, it is not. It is an enablement rejection, and a specification is presumed to be enabled. The burden is on the Examiner, and mere conclusory statements do not make out a *prima facie* case. The rejection is improper and should be withdrawn.

Turning to the prior art rejection, a 20 mer does not anticipate a 10-12 mer.

Application No. 09/870,498  
Amendment dated September 19, 2008  
Reply to Office Action of May 1, 2008

Docket No.: NY-FAPESP 203-US

Should allowance not be forthcoming, after 6 non-final rejections, applicants are entitled to an interview with the Supervisory Primary Examiner, and request such.

\* \* \*

The Commissioner is hereby authorized to charge the extension fee to a credit card. Form PTO 2038 is attached. Please charge any additional fees or credit any overpayment to our Deposit Account No. 50-0624, under Order No. NY-FAPESP 203-US (10026221) from which the undersigned is authorized to draw.

Dated: September 19, 2008

Respectfully submitted,

By 

Norman D. Hanson

Registration No.: 30,946

FULBRIGHT & JAWORSKI L.L.P.

666 Fifth Avenue

New York, New York 10103

(212) 318-3000

(212) 318-3400 (Fax)

Attorney for Applicant